

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. The petitioner and his minor children receive RUFA benefits. His wife also receives SSI benefits. PATH has asked the petitioner to register for Reach Up work activities as a condition to receiving RUFA benefits. The petitioner has requested a waiver of that requirement because he claims he is needed to provide care to his disabled wife in their home.

The Department has denied this request in a notice dated October 25, 2001.

3. As part of his request for an exemption, the petitioner provided a four-page form filled out by his wife's physician stating that she has a combination of medical problems. These include lower back pain (based on an X-ray findings that show minimal degenerative changes), obesity, some breathing difficulties as a residual to lung surgery, mild hypertension, migraine and a raised cholesterol level. The physician stated that she should avoid lifting and standing on her feet for a prolonged period of time and that she is mentally unable to perform activities at a consistent pace. She takes many medications for these conditions but suffers no further impairment from these medications. There was nothing in his report indicating that he had developed a plan of continuing in-home care for the petitioner's wife. His only comment on the need for home care was "I don't know that her husband has to 'be in the home to take care of her'."

4. The petitioner recently saw a specialist in joint diseases with regard to current complaints she has of arthritis. He confirmed that she has a limited range of motion in her right and left elbows and in her hips. He observed no swelling in her joints but noticed a "benign"

hypermobility in her MCP joint, wrists and knees. He did not offer an opinion as to how these conditions might restrict her or whether he felt it was necessary to develop a plan for continuing in-home care during the day.

5. As part of the waiver process, the petitioner was required to see whether or not there might be alternative care available for his wife. To this end, the petitioner contacted the Visiting Nurse's Association who assessed his wife's needs then rejected her application because she did not meet their criteria for help. In a survey instrument prepared by the VNA, based on information provided by the petitioner's wife, the wife was found to have need of total assistance with shopping and housework; some assistance with preparing all but light meals, cleaning up after meals, bathing herself, ambulating outside the home, and occasionally with getting out of bed; and no assistance with feeding herself, dressing and grooming herself, sitting up and moving in bed, using the toilet, using the telephone, ambulating in the house and taking her own medications. She was also determined to have no need of assistance with her children because they are old enough to care for their own needs. Finally, she was found to be oriented, able to communicate and in no need of supervision due to confusion.

6. The petitioner's wife testified that she has received Social Security benefits as a disabled person since 1992. She cannot do any lifting over ten pounds, stand for a long time or walk more than a short distance (she often uses a cane) and seldom goes outside. Sometimes her hands and fingers swell making it hard for her to reach for and grasp objects but she regularly knits and crochets. She can stand long enough to prepare very simple meals for herself by reheating leftovers, but her husband usually prepares all her meals because he is working nearby, it is convenient for him to do so and easier for her. She says she is usually able on a daily basis to get out of bed on her own (if she is stiff she might have to wait or get assistance), dress herself, walk downstairs from her bedroom, get a cup of coffee and wash a few dishes, the latter with discomfort. She can also administer her own medications, use the telephone, walk out of the house on her own and drive up to two miles in the car to run errands. She spends her time watching TV and reading. She goes to visit friends and out to restaurants. Her oldest daughter and grandchildren live nearby and visit her frequently. She gets some assistance from her daughters with bathing in the evenings. She reported getting no other personal care assistance from her husband or anyone else. She

is completely unable to do any housework, including dishwashing and laundry, or to go shopping. She fears being alone because she fell once and had to drag herself over to a chair and wait until someone came in to help her. As these allegations are substantially consistent with the medical opinions, the VNA report and a report she provided to the Department in writing, they are found to be credible. To the extent that these statements conflict with any other written statements (the Supplemental form and the VNA report), the statements made at hearing under oath are found to be the more credible.

7. The petitioner spends the bulk of his day and evening caring for his forty-five animals (including milking the cows) and doing household chores including laundry, sweeping, and vacuuming. He describes himself as a dairy farmer which occupation he took up as a "therapeutic hobby" (he suffered from severe depression a few years ago) from which he makes a little money on milk and eggs.¹ His helper in the dairy farm is a twenty-five year old mentally disabled nephew whom the petitioner describes as needing constant

¹ The Department has offered to assess whether the petitioner's dairy farm might fulfill his Reach Up requirements as self-employment. The petitioner thus far has declined to submit a business plan and other paperwork needed to make this assessment.

supervision. In addition to caring for the animals, supervising the nephew and doing all the housework, he picks the children up from school and their other activities. His personal services for his wife include making her breakfast and lunch, helping her move when she is stiff and checking in on her 3 or 4 times per day while he works in the barn (100 feet from the house). He says that his wife could probably heat up meals made the night before or make a sandwich if she had to. His preparation of the noonday meal usually consists of reheating leftovers. He provides no medical services, such as changing bandages, to his wife. He and his younger children do all the family's housework, meal preparation and shopping for the family. (He describes his nineteen-year-old son as rarely at home.) He worries about his wife whose condition he believes is worsening and he feels more comfortable about her when he is nearby.

8. The petitioner admits that he has not spoken with his wife's physician about developing a continuing in-home care plan but he thinks he will have to at some point. He contends, however, that his physician does support his being in the home to care for his wife and in support offered a number of brief written statements made by the physician to the Department over the last five years. A statement provided

in 1997 said that his wife had multiple problems and would "like her husband home to take care of her". A 1998 statement said that her husband was needed in the home to help her recover from lung surgery. A statement presented in 1999 stated that the petitioner's husband had to be "home with her to provide continuous care as she is unable to do any work, housework, etc. secondary to her back problem". In 2000 that same physician wrote saying that the wife was permanently disabled due to back problems. In 2001, he wrote that the petitioner "has been permanently disabled since 1992 due to back pain (DJD and spondylosis)-I don't expect any improvement due to back pain". The petitioner was apparently exempted from work requirements based on the basis of these letters and contends that nothing has changed in his situation.

9. The petitioner has not explored the possibility of having someone (a friend or relative) look in on the petitioner during the day. Nor has he explored a "Lifeline" solution where his wife could call someone for help if she needed it. He appears to be waiting for PATH to suggest additional possible sources of help to him. His only contact for other help has been the Visiting Nurse's Association.

10. From the evidence above it is concluded that the petitioner does not provide any medical care to his wife at

all. He provides a minimal amount of personal care to her by way of helping with her meals and assistance with movement when she is stiff. The evidence shows that his wife could assume the personal chore of feeding herself lunch with preparation assistance in the mornings or evenings. The petitioner's wife did not claim at the hearing that she cannot move or transfer without his assistance or that there was no friend, relative or organization she could telephone if she needed assistance in moving. In addition, the petitioner has not indicated that he has explored getting anyone, like his grown daughter or another relative, to take over the minimal chore of looking in on his wife now and then. He has approached only the VNA who found his wife's situation not severe enough for their assistance. The petitioner's many other activities (running a dairy farm, "continuously" supervising a disabled adult nephew, keeping house and driving children to after-school activities) belie his assertion that he cannot engage in work activities because he is needed in his home to provide continuing personal services to his wife.

11. Finally, and critically, there is no evidence that the petitioner's wife's physician has developed a current plan for "continuing" in-home care for her or feels that development of such a plan is necessary.

ORDER

The decision of the Department denying the petitioner's request for an exemption from participating in work activities is affirmed.

REASONS

The Departmental regulations allow a deferment or modification of the Reach Up program work requirement for:

. . .

6. A participant needed in the home on a full- or part-time basis to care for a disabled or seriously ill parent, spouse, civil union partner, or child. A disabled or seriously ill person in this context is someone who requires continuing in-home care under the direction of a physician as a result of an accident, disease, physical, or mental condition and also meets one of the following criteria:

- The person is expected to require care for at least two weeks and no more than 12 weeks.
- The person is expected to require care for more than 12 weeks, and no alternative care that enables the participant to fulfill the unmodified work requirement can be arranged.
- The person has a terminal illness and has a life expectancy of less than 12 months.

The department's medical review team, using documentation provided by a physician or licensed psychologist, certifies whether a participant is eligible for a deferment or

modification of the work requirement based on being needed in the home as defined herein.

W.A.M. 2365.3

The petitioner's evidence does not even meet the threshold criteria of "in-home care directed by a physician." The petitioner's wife's physician cannot confirm that he has ordered any in-home care for her. In fact, his statement indicates that he is reluctant to confirm that her husband is needed to take care of her during the day. In addition, the petitioner has not indicated that he has done much other than contact a professional nursing care organization with regard to helping out his wife with these strictly personal (as opposed to medical) care needs. The petitioner and his wife seem to have other relatives (including an adult daughter) and friends in the vicinity but do not seem to have made much of an attempt to contact them for assistance that might free the petitioner up for remunerative work activities.

It is certainly understandable that the petitioner and his wife would feel more comfortable if they were together during the day. However, under the new Reach Up regulations adopted on July 1, 2001, parents who do not meet these new definitions for deferment are required to register for work

activities.² It is possible that PATH would modify or accommodate the petitioner's work activities to meet his wife's needs in some way. However, the minimal and unprescribed personal care the petitioner now provides for his wife cannot be used to avoid his obligation to participate in activities designed to help him find a way to support his family.

The petitioner is surely a busy man but he is involved in activities that do not provide financial support for his family nor are they essential to his wife's well being. The petitioner is encouraged to cooperate with the Department in preparing a business plan for his farm so it could be counted as self-employment. If the farm is not remunerative but he needs to do that work for his own mental well-being, he should ask for an assessment of his own medical condition with regard to his work obligations.

² The petitioner's argument that he used to get exemptions based on the old regulations does little to help him here. This is the first time the petitioner's physician has been required to fill out a four page document rather than write a two line note to document the medical situation. The regulations have apparently become more stringent with regard to exemptions.

As the Department's denial of the deferral is consistent with its regulations, its decision must be affirmed. 3 V.S.A. 3091(d), Fair Haring Rule 17.

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